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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER SCOTT RIDER,

Plaintiff,

No. CIV S-09-2675 FCD DAD P

vs.

M. R. GOLDY, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action filed pursuant to 42 U.S.C. § 1983. By order filed May 6, 2010, the court dismissed plaintiff’s complaint and granted him leave to file an amended complaint. Now pending before the court is plaintiff’s amended complaint.

**SCREENING REQUIREMENT**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic  
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
12 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
18 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

19 The Civil Rights Act under which this action was filed provides as follows:

20 Every person who, under color of [state law] . . . subjects, or causes  
21 to be subjected, any citizen of the United States . . . to the  
22 deprivation of any rights, privileges, or immunities secured by the  
23 Constitution . . . shall be liable to the party injured in an action at  
24 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the



1 relief. See Fed. R. Civ. P. 8(a). Although the Federal Rules adopt a flexible pleading policy, a  
2 complaint must give fair notice to the defendants and must allege facts that support the elements  
3 of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th  
4 Cir. 1984). Plaintiff must allege, with at least some degree of particularity, overt acts which each  
5 defendant engaged in that support his claims. Id. Because plaintiff has failed to comply with the  
6 requirements of Fed. R. Civ. P. 8(a), his amended complaint must be dismissed. The court will,  
7 however, grant leave to file a second amended complaint.

8           If plaintiff elects to file a second amended complaint, he is advised of the  
9 following legal standards that govern the claims he is attempting to present. To the extent that  
10 plaintiff claims defendant Goldy has violated his Eighth Amendment rights by failing to protect  
11 him from other inmates who believe plaintiff to be a sex offender, he must allege facts showing  
12 that: (1) defendant knew that plaintiff faced a substantial risk of serious harm; and (2) defendant  
13 disregarded that risk by failing to take reasonable measures to abate it. See Farmer v. Brennan,  
14 511 U.S. 825, 832 (1994). Moreover, if plaintiff seeks to recover damages on this claim he must  
15 allege facts showing that he suffered actual physical injury as a result of defendant Goldy failing  
16 to protect him. See Babcock v. White, 102 F.3d 267, 270 (7th Cir. 1996) (“[I]t is the reasonably  
17 preventable assault itself, rather than any fear of assault, that gives rise to a compensable claim  
18 under the Eighth Amendment.”); see also Henslee v. Wilson, No. 08cv1015-IEG-LSP, 2009 WL  
19 2575982 at \*2-3 (S.D. Cal. Feb. 5, 2009) (dismissing plaintiff’s failure to protect claim where he  
20 failed to allege that he was actually attacked).<sup>1</sup>

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22           <sup>1</sup> Plaintiff does not appear to be seeking prospective relief with respect to his Eighth  
23 Amendment failure to protect claim. However, should he decide to seek such prospective relief  
24 in any second amended complaint he elects to file, plaintiff is advised that he must be able to  
25 allege facts showing that: (1) he faces an imminent likelihood of physical danger; and (2)  
26 defendant Goldy is unlikely to protect him from that danger. See e.g., Stevens v. Harper, 213  
F.R.D. 358, 370-71 (E.D. Cal. 2002) (finding that plaintiff was not entitled to prospective  
injunctive relief on his failure to protect claim when he failed to allege facts showing an  
imminent likelihood of danger).



